Franchise Tax Board

ANALYSIS OF AMENDED BILL

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Bill Number: AB 2235

Related Bills:
Telephone: 845-6979
Amended Date: 05-10-2000

Attorney: Patrick Kusiak
Sponsor:

SUBJECT: Vehicle Fuel Windfall Profits Tax/Vehicle Fuel Windfall Return Fund

SUMMARY OF BILL

This bill would impose a Vehicle Fuel Windfall Profits Tax, at a rate to be calculated by the Franchise Tax Board (FTB), on specified taxpayers engaged in petroleum refining in California. Revenue from this tax would be deposited into the Vehicle Fuel Windfall Return Fund, which this bill would create.

SUMMARY OF AMENDMENT

The May 10, 2000, amendment deleted the provision of the bill as introduced (relating to property taxes) and replaced it with the Vehicle Fuel Windfall Profits Tax discussed in this analysis.

EFFECTIVE DATE

As a tax levy, this bill would become effective immediately upon enactment. The bill specifies that it would apply to income years beginning on or after January 1, 2000, and before January 1, 2001.

LEGISLATIVE HISTORY

SB 1777 (2000) would exempt certain types of fuel from sales tax and create the Petroleum Windfall Profits Tax and the Petroleum Windfall Profits Fund. SB 1777 is in the Senate Rules Committee.

SB 14 (1995/96) was almost identical to SB 1777. It would have exempted certain types of fuel from sales tax and created the Petroleum Excess Profits Tax and the Petroleum Excess Profits Fund. SB 14 failed passage in the Assembly Revenue and Taxation Committee.

SPECIFIC FINDINGS

Existing **federal income tax law** contains certain provisions for taxpayers in the oil and gas industry, such as an enhanced oil recovery credit, the option to use cost or percentage depletion in some circumstances, special expensing of intangible drilling and development costs, and restrictions on the foreign tax credit for foreign oil and gas extraction income.

State tax law conforms to federal law on depletion and intangible drilling and development costs. California also allows an enhanced oil recovery credit equal to one-third of the federal credit for projects located within California.

However, state law does not allow the foreign tax credit. Excess intangible drilling and development costs are a preference item for alternative minimum tax purposes.

Board Position:			Department Director	Date
______ S	______ NA	______ NP	Alan Hunter for G.H.G.	6/8/00
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______ N	______ OUA	__X__ PENDING		

Under the Bank and Corporation Tax Law (B&CTL), **this bill** would impose a Vehicle Fuel Windfall Profit Tax (Profit Tax) upon any taxpayer engaged in petroleum refining, as described in Code 324110 of the North American Industry Classification System (NAICS) Manual, in California. The Profit Tax would be imposed on the taxpayer's gross receipts, as defined.

This bill would require the FTB to establish the rate of the Profit Tax for each taxpayer and publicly announce that rate by January 31, 2001. The taxpayer's rate would be set to recapture the refinery cost and profit margin that exceeds $0.47 per gallon. The California Energy Commission would estimate refinery cost and profit margins of each taxpayer and transmit the estimates to FTB by January 15, 2001.

The refinery costs and profit margin would include all costs associated with refining and terminal operation, crude oil processing, oxygenate additives, product shipment and storage, oil spill fees, depreciation, brand advertising, purchases of gasoline to cover refinery shortages, and profits.

The Profit Tax imposed under this bill would be in addition to all other taxes imposed under Chapter 2 of the B&CTL, such as the franchise tax and the minimum franchise tax. The Profit Tax would be imposed and collected in the same manner as other taxes.

This bill would create the Vehicle Fuel Windfall Return Fund in the State Treasury. All revenue from the Profit Tax would be deposited into this Fund.

<u>Policy Considerations</u>

This bill could be viewed as inequitable as it would impose an additional tax on a single industry that already is subject to state taxation.

<u>Implementation Considerations</u>

This bill would create an additional tax that would be imposed on fewer than 20 taxpayers for only one year. Changes would have to be made to the department's programs and operations to impose this new tax. Given the limited number of taxpayers, tax returns containing the Profit Tax would likely be processed manually.

The following additional implementation concerns have been identified with this bill. The department's staff is available to assist with any amendments to resolve these concerns.

- Since this tax would be imposed and collected like the franchise tax, quarterly estimated payments would be required. Taxpayers would already have made estimated payments during 2000 based on their existing tax liability. Since the tax would be imposed for the 2000 year, taxpayers may owe interest and penalties for failure to pay estimated taxes based on their Profit Tax liability. The author may wish to waive the interest and penalties for the 2000-year or clarify that interest and penalties would be due.

- If a taxpayer underpays its tax liability, it is unclear whether the payment should be credited first to its franchise tax liability, with the remainder to the Profit Tax, or whether the insufficient payment should be proportionally divided. Also, if a taxpayer pays penalties and interest on its Profit Tax liability, it is unclear whether the amount of penalties and interest should be deposited into the General Fund or the Vehicle Fuel Windfall Return Fund. This bill should be modified to ensure that the author’s intent is achieved.
- The Profit Tax would be imposed on gross receipts of a taxpayer engaged in petroleum refining, but does not limit the receipts subject to tax to those allocated under provisions of the B&CTL. This could include gross receipts from all sales rather than gross receipts from sales in California. In addition, this language is not specifically limited to gross receipts from petroleum refining. Therefore, a taxpayer engaged in several businesses may be required to pay the Profit Tax on all sales, including sales in states other than California and sales not related to its refinery operation. This language should be clarified if the author intends to impose the tax only on sales in California from refining.
- The Profit Tax revenue would be deposited into a special fund, the Vehicle Fuel Windfall Return Fund. The department currently deposits all money received into the Personal Income Tax Fund or the Bank and Corporation Tax Fund. In cases where money is designated for a special purpose, such as a voluntary contribution fund, the department determines the appropriate amount and then informs the Controller, who makes the actual transfer. Amending the bill to establish a similar process would eliminate complicated changes to the department’s accounting systems.
- It is unclear whether disclosure laws would prohibit the department from publishing the tax rates since the tax rates are based upon the taxpayer’s profits and costs.

Technical Considerations

The bill refers to the NAICS, but does not specify a publication date for the manual.

FISCAL IMPACT

Departmental Costs

The department’s costs to administer this bill cannot be determined until implementation concerns have been resolved.

Tax Revenue Estimate

A revenue estimate cannot be provided since the refinery costs and profit margins of the specified taxpayers are unknown. Further, staff at both the California Energy Commission and the State Department of Conservation indicated that the required data for determining these amounts are currently not available. Moreover, the term “profit margin” is not defined in the bill.

BOARD POSITION

Pending.